



Joint Legislative Audit Committee
Office of the Auditor General



REPORT TO THE CALIFORNIA LEGISLATURE

STATE OF CALIFORNIA STD FORM 142-A (REV. 2-72)		EMPLOYEE		LEAVE RECORD				
YEAR		SICK LEAVE HOURS		VACATION HOURS				
EMPLOYEE NAME		PER PERM	TOT. AVAIL.	USED	BALANCE	TOT. AVAIL.	USED	BALANCE
SOCIAL SECURITY NO.		JAN				JAN		
WORK WEEK GR		FEB				FEB		
STATE SERVICE		MAR				MAR		
YRS.								
VACATION GR								
VACATION GR								

EMPLOYEE ATTENDANCE RECORD																																				
EMPLOYEE																EST. POS. NO.																				
ADDRESS																POSITION TITLE																				
TELEPHONE NO.																DATE APPOINTED																				
MONTH	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	E	U	R	REMARKS	
JAN.																																				
FEB.																																				
MAR.																																				
APR.																																				
MAY																																				
JUNE																																				
JUL.																																				
AUG.																																				
SEPT.																																				
OCT.																																				
NOV.																																				
DEC.																																				

SICK LEA		
PREVIOUS BALANCE		
MONTH	TOT. AVAIL.	FAMILY
JAN.		SIZE
FEB.		
MAR.		
APR.		
MAY		
JUN.		
JUL.		
AUG.		
SEP.		
OCT.		
NOV.		
DEC.		

METROPOLITAN STATE HOSPITAL			
DAILY NEGATIVE TIME REPORT			
Program or Service		Date	
This report is used to advise the Personnel Office of all shift changes and absences except regular days off, and shall be forwarded to the Personnel Office Timekeepers daily by 10 a.m.			
EMPLOYEE	SHIFT CHANGE	HOURS ABSENT	REMARKS
	Hours		
Last Name	First Name	from	to
		Sick	Other - - - Explain

ATTENDANCE REPORTING PRACTICES OF PHYSICIANS AT STATE HOSPITALS DEPARTMENT OF HEALTH

Office of the Auditor General
1955-1978

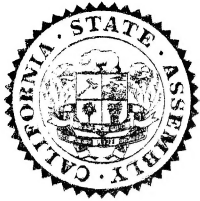
REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

728

ATTENDANCE REPORTING PRACTICES
OF PHYSICIANS AT STATE HOSPITALS

DEPARTMENT OF HEALTH

April 1978



Joint Legislative Audit Committee

OFFICE OF THE AUDITOR GENERAL

California Legislature



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April 18, 1978

728

The Honorable Speaker of the Assembly
The Honorable President pro Tempore of the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's report on attendance record procedures of physicians at state hospitals administered by the Department of Health.

Acting Director, Ed Beach, should consider summoning hospital administrators to Sacramento for a refresher course and seminar on department regulations. It appears that in some critical fiscal areas there are none and in others, existing regulations are infeasible. Modification should be discussed with those responsible for implementation.

By copy of this letter, the Department is requested to advise the Joint Legislative Audit Committee within sixty days of the status of implementation of the recommendations of the Auditor General that are within the statutory authority of the Department.

The auditors are Gerald A. Silva, CPA, Audit Manager; Merrill E. Tompkins, CPA; Kathleen A. Herdell; and Donald L. Truitt.

Respectfully submitted,

MIKE CULLEN
Chairman

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	1
INTRODUCTION	3
AUDIT RESULTS	
State Hospitals' Attendance Reporting Systems for Physicians are Inadequate	6
Recommendation	14
State Hospitals Are not Complying with the State Administrative Manual When Contracting for Medical Consulting Services	16
Recommendation	19
OTHER PERTINENT INFORMATION	20
WRITTEN RESPONSE TO THE AUDITOR GENERAL'S REPORT	
Department of Health	21
<u>APPENDICES:</u>	
APPENDIX A--Legislative Counsel Opinion #16472	A-1
APPENDIX B--Legislative Counsel Opinion #17393	B-1
APPENDIX C--Legislative Counsel Opinion #1864	C-1

SUMMARY

California state hospitals do not have a uniform system of employee attendance reporting as required by state laws and regulations. Without such a system, deviations from state laws and regulations regarding the reporting of employee attendance can and do occur at the state hospitals.

Some of the conditions which indicated a need for a uniform system of attendance reporting for the state hospitals are:

- State regulations requiring affirmative reporting of the attendance hours of part-time employees were not followed (p.9)
- Some part-time physician employees received salaries for hours in excess of scheduled work hours (p.10)
- Records were falsified, resulting in some physicians being paid less than established hourly rates (p.12)
- Consultant billings were in excess of the actual hours worked in three instances (p.13)
- Salary over and underpayments were made due to clerical errors at some hospitals (p.13).

In addition, state hospitals, in contracting with medical consultants, are not complying with the State Administrative Manual in that the hospitals are not obtaining three qualifying proposals for physician consultant services nor an explanation for the absence of such proposals as required by the State Administrative Manual.

On page 14 we recommend that the Department of Health establish and enforce uniform regulations for the attendance reporting practices of the officers and employees of the state hospitals, and on page 19 we recommend that the state hospitals comply with the State Administrative Manual when contracting for physicians' services.

INTRODUCTION

In response to a resolution of the Joint Legislative Audit Committee we have reviewed the attendance reporting practices for physicians at the 11 state hospitals under the administration of the California Department of Health. This review was conducted under the authority vested in the Office of the Auditor General by Section 10527 of the Government Code.

In June 1977, the Department of Health found that three physicians employed by a state hospital were not working the number of hours equivalent to their salary base. The physicians were hired at one-half physician's salary but actually were available on call to the hospital instead of working one-half time. These physicians are no longer employed at the hospital. The concern over this incident initiated the request for our audit of the attendance reporting practices at the California state hospitals.

The state hospitals are responsible for the care and treatment of mentally and developmentally disabled persons. During fiscal year 1976-77 the state hospitals reported expenditures of \$294,076,087 categorized as follows:

Salaries, Wages and Benefits	\$249,120,583
Operating Expenses and Equipment	43,867,730
Special Items	<u>1,087,774</u>
	<u>\$294,076,087</u>

The hospitals had 14, 989 authorized positions for fiscal year 1976-77 and a resident population of 15,901 as of June 30, 1977.

The Department of Health, pursuant to our request, surveyed the state hospitals to determine the actual number of physician positions for fiscal year 1976-77. The following table summarizes the number of full-time, part-time and intermittent* physicians and the amounts the state hospitals reported as expended for salaries and wages for those physicians during fiscal year 1976-77.

STATE HOSPITALS NUMBER OF PHYSICIANS AND SALARIES ^{1/} DURING FISCAL YEAR 1976-77							
	Full-Time		Part-Time		Intermittent		Total
	Number	Salaries	Number	Salaries	Number	Salaries	Salaries
Agnews	5	\$ 159,996	4	\$102,478	-		\$ 262,474
Atascadero	7	298,269		-	2	\$ 11,931	310,200
Camarillo	54	1,993,122	9	237,941	-	-	2,231,063
Fairview	13	458,854	9	65,028	-	-	523,882
Metropolitan	13	519,024	2	20,898	12	193,104	733,026
Napa	60	2,339,006	10	98,921	21	330,668	2,768,595
Pacific	13	519,260	1	35,568	5	77,553	632,381
Patton	15	625,970	4	13,968	2	18,823	658,761
Porterville	9	420,065	3	39,234	-	-	459,299
Sonoma	19	817,272	4	76,640	5	38,115	932,027
Stockton	<u>7</u>	<u>267,732</u>	<u>6</u>	<u>44,554</u>	<u>-</u>	<u>-</u>	<u>312,286</u>
	<u>215</u>	<u>\$8,418,570</u>	<u>52</u>	<u>\$735,230</u>	<u>47</u>	<u>\$670,194</u>	<u>\$9,823,994</u>

^{1/} Not including employee benefits.

* Intermittent employment is irregular or recurring hourly employment that is less than full-time each year.

Our review of attendance reporting practices at the state hospitals included site visits and audit tests at five hospitals* and a questionnaire study of the other hospitals. We conducted limited tests of the hospitals' records to provide some measure of the hospitals' compliance with applicable state laws or regulations. These tests were confined to the month of September 1977, except at Stockton State Hospital where we also tested in the month of March 1977. We have included some examples of the deviations from state laws or regulations for illustrative purposes. A summary of the attendance reporting practices reported by the state hospitals is provided in Table 1, page 8.

* Agnews, Camarillo, Napa, Sonoma, Stockton

AUDIT RESULTS

STATE HOSPITALS' ATTENDANCE
REPORTING SYSTEMS FOR
PHYSICIANS ARE INADEQUATE

The Department of Health has jurisdiction over the California state hospitals. All of the state hospitals are subject to uniform rules and regulations of the Department of Health (Sections 4100 and 4101, Welfare and Institutions Code). In addition, the Department of Health is required to establish such by-laws, rules and regulations as it deems necessary and expedient for regulating the duties of officers and employees of the hospitals, and for its internal government discipline and management (Section 4109, Welfare and Institutions Code).

The Department of Health has not established uniform rules and regulations for the attendance reporting practices of the officers and employees of the state hospitals. Each hospital is following different attendance reporting procedures.

The following conditions at state hospitals indicated the need for a uniform system of attendance reporting:

- State regulations requiring affirmative reporting of the attendance hours of part-time employees were not followed
- Some part-time physician employees received salaries for hours in excess of scheduled working hours
- Records were falsified, resulting in some physicians being paid less than established hourly rates
- Consultant billings were in excess of the actual hours worked in three instances
- Salary over and underpayments were made due to clerical errors at some hospitals.

A summary of selected attendance reporting practices reported by the state hospitals is provided in the following table.

TABLE 1

SUMMARY OF SELECTED REPORTED ATTENDANCE REPORTING
PRACTICES AT CALIFORNIA STATE HOSPITALS

CODE: FT-Full-Time PT-Part-Time I-Intermittent

STATE HOSPITAL

STATE HOSPITAL	AGUEWS			CAHARILLO			NAPA			SONOMA			STOCKTON			ATASCADERO			FAIRVIEW			METROPOLITAN			PACIFIC			PATTON			PORTERVILLE		
	FT	PT	I	FT	PT	I	FT	PT	I	FT	PT	I	FT	PT	I	FT	PT	I	FT	PT	I	FT	PT	I	FT	PT	I	FT	PT	I			
1. Positive Attendance Maintained by Personnel Office.		1/	X		2/	X		3/	X		X	X					5/	X		X	X					X				4/	X		
2. Certified attendance data sent to the Personnel Office																																	
Monthly	X	X	X					X	X										X	X	X												
Semi-Monthly																	X	X															
Weekly					X	X		X			X	X																					
Daily																																	
3. Standard State form 681 used for Internal Attendance Reports	X								X	X				X	X	X	X										X						
4. Hospital Operations Manual prescribes attendance reporting procedures	X	X	X																														
5. Personnel Office audits hours reported as worked from attendance clerks	X	X	X																									7/	7/	X	X	X	
6. Attendance reporting procedures used consistently for all	X	X	X																													X	

FOOTNOTES:

I. Number of physicians with positive attendance records

1/ Two of four

2/ Five of six

3/ Eleven of twelve

4/ One of four

II. Other Notes

5/ Hospital staff regard attendance reports as positive, but our review revealed that the Personnel Office maintains negative attendance.

6/ Hospital staff reported Form 681 was used universally, but our review revealed that part-time and intermittently employed physicians used a reporting form developed specifically for Fairview.

7/ Audits are performed in exception cases.

State Regulations Requiring Affirmative
Reporting of the Attendance Hours of
Part-Time Employees Were Not Followed

Positive attendance reporting requires reporting the number of hours an employee was in attendance. Negative attendance reporting records only absences and extra hours worked, with attendance assumed unless otherwise noted on attendance reports.

The California state hospitals, in compliance with state regulations, reportedly maintain negative attendance records for their full-time employees. However, pursuant to Section 18024 of the Government Code, the State Personnel Board requires positive attendance reporting for those state employees who are required to work other than a regular eight-hour schedule. As shown in Table 1, Stockton, Agnews, Camarillo, Napa, Patton, Porterville, Atascadero and Metropolitan State Hospitals do not maintain positive attendance records for part-time physicians and are not in compliance with State Personnel Board rules.

Neither a positive nor negative attendance reporting system guarantees the accuracy of reported attendance; such accuracy can only be determined by comparing reported attendance to actual attendance.

Some Part-Time Physician Employees
Received Salaries for Hours in Excess
of Scheduled Work Hours

At Stockton State Hospital the attendance reporting practices for the part-time specialists do not show the specific hours or times these part-time specialists work. There is, therefore, no assurance that these specialists work the part-time basis for which they are paid.

Five part-time physicians hold regular clinics. We compared the physicians' scheduled clinic hours^{*} with the physicians' part-time pay percentages and found that four of the physicians were paid for hours in excess of the scheduled clinic hours.

	<u>Percentage that Pay Base Exceeds Clinic Work Base</u>
Physician #1	10%
Physician #2	27.5%
Physician #3	0%
Physician #4	20%
Physician #5	30%

* We were advised by hospital personnel that all of the clinics do not operate for the full scheduled period; however, for this analysis we either assumed they did or allowed for a longer period.

Based on the estimated percentages that the physicians' pay base exceeds the work base, the annual overpayment to the four specialists would be \$18,220 as follows:

	Estimated Annual Excess Payment Based on Work Hours
Physician #1	\$ 2,180
Physician #2	4,810
Physician #3	-0-
Physician #4	4,490
Physician #5	<u>6,740</u>
	<u>\$18,220</u>

To the extent that the physician clinic hours are less than the pay basis, the vacation, sick leave, retirement and other benefits which the physicians receive are also in excess of those that are earned.

Hospital personnel informed us that part-time pay is based on the need for and the value of services rendered; not solely on time spent at the hospital. Hospital administrators advise that the hospital needs part-time medical specialists and that the hospital has, for a number of years, fulfilled this need by employing specialists as permanent part-time employees rather than on a fee for service basis or on a consulting basis. The hospital administration contends that this is the only way they can get the specialists to provide the necessary services. According to the hospital administration the part-time specialists prefer the arrangement because it entitles them to vacation and sick leave benefits, and if their part-time basis is 50 percent or more, they are entitled to retirement and medical benefits.

Records Were Falsified, Resulting in
Some Physicians Being Paid Less Than
Established Hourly Rates

Sonoma State Hospital employs physicians intermittently to perform Medical Officer duty. The physicians are hired at hourly rates established in accordance with State Personnel Board rules, but are not paid that rate. Instead, the physicians are paid salaries established by the hospital administration, and such salaries are less than they would be if computed using the hourly rates.

We compared the salaries paid to these physicians during September 1977 with the amount the salaries would have been if determined by the State Personnel Board rates. The comparison indicated the physicians were underpaid \$1,014.

The State Controller's Payroll Manual requires that certain payroll data, including hours worked and hourly salary rate for intermittent employees, be submitted on payroll reports. Personnel clerks at Sonoma State Hospital understated the number of hours worked by these physicians on the Controller's report.

The executive director of the hospital indicated that he was not aware of the reasons for the underpayments. The administrator in charge of these physicians stated that the practice has taken place for several years.

Consultant Billings Were in Excess of
the Actual Hours Worked in Three Instances

Sonoma State Hospital has 29 consultant contracts providing for medical services. The contracts provide for an hourly rate; except for one contract which provides for \$100 per consultation.

During September 1977, 12 consultants billed the hospital for services. Three of the billings appeared to be in excess of the actual hours worked as indicated by clinic schedules. We discussed the situation with the program director responsible for approving the payments to the consultant physicians. He agreed that the billings were excessive and stated that he would inform the hourly consultants that in the future they would be paid only for actual hours worked. Payments to the other consultants were in accordance with the terms of the contracts.

Salary Over and Underpayments Were Made
Due to Clerical Errors at Some Hospitals

We noted several deficiencies in the preparation of permanent employee attendance reports by personnel clerks.

At Camarillo, Metropolitan, Napa and Stockton State Hospitals, we noted errors in postings to permanent employees' records. Most errors were in leave and overtime balances. However, our review of the September 1977 payrolls at Metropolitan and Camarillo and a limited test of March 1977 records at Stockton disclosed that errors in calculating hours worked resulted in \$348 in salary underpayments and \$961 in salary overpayments to part-time and intermittent physicians.

Sonoma State Hospital personnel clerks have been determining fractional time salaried positions on a 160-hour work month instead of a 168 or 176-hour work month, or the average of 173.7, as specified in Title 2 of the California Administrative Code, (Sections 652 and 93 respectively). As a result, part-time physicians have been allowed to work fewer hours each month than the normal fractional time base. We estimate that during September 1977, this practice resulted in salary overpayments of \$257 to three part-time physicians at Sonoma State Hospital.

CONCLUSION

The Department of Health has not established uniform regulations for the attendance reporting practices at the 11 California state hospitals. Attendance reporting systems for physicians within the state hospitals have resulted in instances of nonadherence to state regulations and salary over and underpayments.

RECOMMENDATION

We recommend that the Department of Health establish uniform regulations for the attendance reporting practices of the state hospitals as required by the Welfare and Institutions Code. In addition we recommend that the Department establish policies to ensure that such regulations are followed.

BENEFIT

Establishing a uniform system of regulations for the state hospitals would communicate to those hospitals what their responsibilities are regarding attendance reporting and would lessen the likelihood of future over and underpayments to physicians at California state hospitals.

STATE HOSPITALS ARE NOT COMPLYING
WITH THE STATE ADMINISTRATIVE MANUAL
WHEN CONTRACTING FOR MEDICAL
CONSULTING SERVICES

The Legislature vested in the Department of General Services general powers of supervision over matters concerning the financial and business policies deemed proper to preserve the rights and interests of the State. To meet its responsibilities in reviewing contracts, the Department of General Services is concerned with ensuring that the best interests of the State are preserved and accordingly provided certain policies toward that end.

One such provision in the State Administrative Manual states that at least three qualifying proposals will be secured on all potential contracts for professional consultant services; or, in those instances where three qualifying proposals cannot be obtained, a full explanation will accompany the contract including the names and addresses of the firms or individuals requested to submit proposals and the fullest known reasons why they did not. Our review of consulting contracts from July 1977 through September 1977 showed that the state hospitals are not complying with this provision.

Nine of the 11 state hospitals have 93 consultant contracts for various medical services to be provided during fiscal year 1977-78.

The Consultant physicians employed by the hospitals are for the most part specialists in the medical field. The hospitals' contract for a variety of specialists such as:

Eye, Ear, Nose, Throat	Gynecology
Radiology	Urology
Oncology	Electro-Cardiogram Analysis
Pathology	Dermatology
Surgery	Internal Medicine
Neurology	Orthopedics
Psychiatry	Plastic Surgery

The contracts for professional medical consulting services that we reviewed at five state hospitals had neither the required three qualifying proposals nor an explanation for the absences as required in the State Administrative Manual.

We were informed by hospital administrators that they do not require that physicians submit bids or proposals for their services. The physicians are hired through personal contacts and references from other physicians. The administrators stated that they are fortunate when they can acquire the services of the physicians to provide medical treatment for the state hospital residents.

One administrator said he believes that physicians are reluctant to work at the state hospitals because of the fee limitations of Medi-Cal rates. Other administrators expressed their beliefs that the complications of treating the state hospital residents deterred the physicians from providing services. The administrators feel that these patients present several complications not usually encountered. For example, the administrators believe many state hospital residents do not want to be treated and will often resist the physician's efforts to provide treatment. The administrators also stated that some patients are unable to communicate with the physicians, which makes treatment difficult.

Hospital administrators also expressed their belief that the physicians who provide the service do so out of a sense of civic responsibility toward the state hospital residents, even though the physicians may be reluctant to work for the contract fee which customarily is a flat fee per consultation, regardless of the difficulty or complexity of the medical problem.

CONCLUSION

The state hospitals are not complying with the State Administrative Manual when contracting for professional consulting services in that when three qualifying proposals are not obtained prior to awarding the contract, a full explanation of the reasons therefor is not provided.

RECOMMENDATION

We recommend that the state hospitals follow the requirements of the State Administrative Manual in acquiring the services of medical consultants.

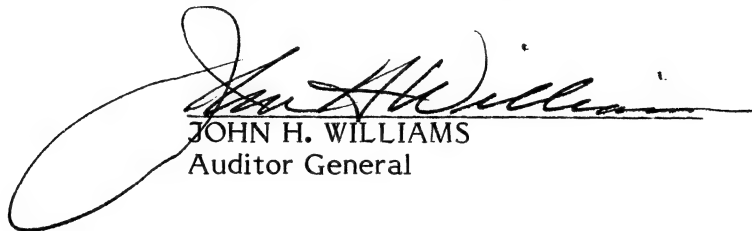
BENEFIT

Implementing this recommendation would ensure compliance with the State Administrative Manual regarding the hiring of consultants. Such compliance is designed to encourage the best use of state resources.

OTHER PERTINENT INFORMATION

Several employment conditions of physicians at the state hospitals raised questions which we referred to the Legislative Counsel. The Counsel's opinions are attached as Appendices A, B and C.

Respectfully submitted,



JOHN H. WILLIAMS
Auditor General

Date: April 14, 1978

Staff: Gerald A. Silva, CPA, Audit Manager
Merrill E. Tompkins, CPA
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DEPARTMENT OF HEALTH

714-744 P STREET

SACRAMENTO, CALIFORNIA 95814

916/445-1248



April 13, 1978

Mr. John H. Williams
Auditor General
Joint Legislative Audit Committee
925 L Street - Suite 750
Sacramento, CA 95814

Dear Mr. Williams:

The Department of Health appreciates the opportunity to respond to the Draft of your audit report on Attendance Reporting Practices of Physicians at State Hospitals. We are in agreement that the two recommendations listed should be corrected.

Recommendation One

"We recommend that the Department of Health establish uniform regulations for the attendance reporting practices of the state hospitals as required by the Welfare and Institutions Code. In addition we recommend that the Department establish policies to ensure that such regulations are followed."

The Department of Health will establish uniform regulations for the attendance reporting of all contract, part time and intermittent employees. State hospitals at the annual meeting of personnel officers were directed to implement positive time reporting practices and to provide a monitoring system to insure compliance. Headquarters will evaluate the hospital systems periodically to insure overall conformity.

Recommendation Two

"We recommend that the state hospitals follow the requirements of the State Administrative Manual in acquiring the services of medical consultants."

The Department of Health tries to hire the best physician it can find. It is not possible nor desirable to obtain three qualifying proposals. The Department of Health will develop procedures to insure that a full explanation of the reasons for not obtaining three qualifying proposals is given.

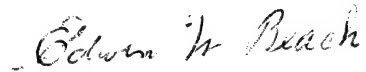
Mr. Williams

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April 13, 1978

I want to commend you and your staff for a thorough and professional effort. State Hospital staff have indicated that the personnel assigned to this task were outstanding in their approach and manner.

Sincerely,

A handwritten signature in cursive script that reads "Edwin W. Beach". The signature is written in dark ink and is positioned above the printed name and title.

Edwin W. Beach
Director of Health

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RAY H. WHITAKER
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Sacramento, California
December 6, 1977

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DEPUTIES

Honorable Mike Cullen
5144 State Capitol

State Government: Civil Service - #16472

Dear Mr. Cullen:

You have asked the following questions regarding the employment by the State Department of Health of part-time physicians to provide specialized services to patients at a state hospital.

QUESTION NO. 1

Are the permanent civil service personnel employed on a part-time basis required by law to be present at the state hospitals to perform their duties?

OPINION NO. 1

The permanent civil service personnel employed on a part-time basis are not required by law to be present at the state hospital to perform their duties.

ANALYSIS NO. 1

Section 19251 of the Government Code, among other things, requires each state officer and employee during his hours of duty as a state officer or employee and subject to such other laws, rules, or regulations as pertain thereto, to devote his full time, attention and efforts to his state office or employment. There is no provision requiring such duties to be performed only at state facilities. While Section 4009 of the Welfare and Institutions Code authorizes the State Department of Health to appoint and fix the compensation of such employees as it deems necessary, subject to the laws governing civil service, and Section 4302 of the Welfare and Institutions Code provides that the Director of the State Department of Health shall have the final authority for determining state hospital employee needs, there is no provision requiring state hospital employees to perform their duties only at the department's facilities.

Thus, the State Department of Health can permit its employees to perform their duties at places other than state facilities.

Accordingly, the permanent civil service personnel employed on a part-time basis are not required by law to be present at the state hospitals to perform their duties.

QUESTION NO. 2

Is it legal for such part-time civil service employees to also be retained on a contract basis to perform different services?

OPINION NO. 2

It is legal for part-time civil service employees to also be retained on a contract basis to perform different services, if such services could not be adequately, satisfactorily, or competently performed by civil service employees.

ANALYSIS NO. 2

Section 1 of Article VII of the California Constitution (formerly Section 1 of Article XXIV) provides:

"SECTION 1. (a) The civil service includes every officer and employee of the state except as otherwise provided in this Constitution.

"(b) In the civil service permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination."

The above provision is implemented by the State Civil Service Act (Part 2 (commencing with Sec. 18500), Div. 5, Gov. C.).

In this regard, the California Supreme Court, in Burum v. State Compensation Ins. Fund, 30 Cal. 2d 575, 580, and State Compensation Ins. Fund v. Riley, 9 Cal. 2d 126, 135, found that former Section 1 of Article XXIV restricted the performance of state functions through private personal service contracts. An exception to the personal service contract prohibition of Article XXIV was found in both Riley and Burum to exist in those instances only in which the services required are of a nature that they could not be adequately, satisfactorily, or competently performed by employees selected through the civil service procedure.

Whether desired services can be adequately, satisfactorily, or competently performed by civil service employees is a question of fact.

In Burum v. State Compensation Ins. Fund, supra, the Supreme Court was faced with a case involving the retention of private legal counsel by the State Compensation Insurance Fund for the purpose of recovering moneys paid out to survivors of an employee covered by his employer's workmen's compensation insurance policy. The fund, contemporaneously with the paying of the survivor's claim, entered into a contract with a private attorney to represent it in the death action against third parties ultimately responsible for the death of the deceased employee. The fund justified its retention of private counsel on the basis

that such action allowed it to initiate the lawsuit in the survivor's name and not in the name of the insurer thereby avoiding any prejudice on the part of the jury towards the insurer. The Supreme Court determined that: "... as a matter of tactics and in recognition of certain practical considerations affecting its status with reference to the death action (citation omitted) the fund negotiated its contract with plaintiffs ... (citation omitted). Accordingly, the facts pleaded support plaintiffs' allegation that the particular services here in question could not be performed adequately, competently or satisfactorily by attorneys selected under civil service; and such pleading is sufficient, on demurrer, to bring plaintiffs' case within the exception ..." (Burum, at 582).

More recently the third appellate district of California held, in California State Employees Assn. v. Williams, 7 Cal. App. 3d 390, that in certain limited instances state business could be conducted through personal service contracts without an adequate, satisfactory, or competent determination being made that the services in question could not be performed by civil service employees. However, the court limited this so-called "new rule" to instances in which "... a new state function not previously conducted by any state agency ... is performed by contract under legislative direction and authority." (See Williams, pp. 400-401.)

In the situation in question, there is no express legislative direction and authority. Accordingly, performance of the services in question by non-civil-service personnel would require a finding that such services could not be adequately, satisfactorily, or competently performed by civil service employees. However, there is no provision of law prohibiting part-time civil service employees from also being retained on a contract basis to perform different services.

Therefore, it is our opinion that it is legal for part-time civil service employees to also be retained on a contract basis to perform different services, if such services could not be adequately, satisfactorily, or competently performed by civil service employees.

Honorable Mike Cullen - p. 5 - #16472

QUESTION NO. 3


Is there a legal distinction between a contract consultant and an employee hired on a part-time basis?

OPINION AND ANALYSIS NO. 3

There are no express provisions of state law respecting contract consultants to state agencies. However, the term "employee," used with reference to civil service, means a person legally holding a position in the state civil service (Sec. 18526, Gov. C.) and the courts have stated that a person performing services for another, unless an independent contractor, is an employee (First Trust & Sav. Bank v. Costa, 83 Cal. App. 2d 368, 372).

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
Gerald Ross Adams
Deputy Legislative Counsel

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BION M. GREGORY

Sacramento, California
January 30, 1978

Honorable Mike Cullen
Assembly Chamber

State Government - Civil
Service - #17393

Dear Mr. Cullen:

You have asked the following question regarding the employment by the State Department of Health of physicians at a state hospital.

QUESTION

Can such physicians be paid to be available on an on-call basis while not at the state hospital?

OPINION

The physicians can be paid to be available on an on-call basis while not at the state hospital.

ANALYSIS

While Section 4009 of the Welfare and Institutions Code authorizes the State Department of Health to appoint and fix the compensation of such employees as it deems necessary, subject to the laws governing civil service, and Section 4302 of the Welfare and Institutions Code provides that the Director

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of Health shall have the final authority for determining state hospital employee needs, there is no express provision of law respecting the matter in question.

However, governmental officials may exercise such additional powers as are necessary for the due and efficient administration of powers expressly granted by statute, or as may fairly be implied from the statutes granting powers (In re Cathey, 55 Cal. 2d 679, 689), and, in our opinion, the power to employ physicians in the manner in question can be fairly implied from the authority to determine state hospital employee needs. Furthermore, we have been informed that the State Personnel Board, in establishing the civil service classifications for the employment of physicians at state hospitals, has authorized the payment of a salary differential to those physicians who are available on an on-call basis.

Accordingly, in our opinion, the physicians can be paid to be available on an on-call basis while not at the state hospital.

Very truly yours,

Bion M. Gregory
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Honorable Mike Cullen
Assembly Chamber

State Government - Civil Service - #1864

Dear Mr. Cullen:

You have asked the following question regarding the employment by the State Department of Health of physicians at state hospitals under the state civil service system.

QUESTION

Can the State Department of Health employ physicians on a half-time basis without prescribing any hours of work during any particular pay period?

OPINION

The State Department of Health cannot employ physicians on a half-time basis without prescribing any hours of work during any particular pay period.

ANALYSIS

Section 18020 of the Government Code prescribes the general policy of the state respecting the days and hours of work of state employees and reads as follows:

"18020. It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of state employees eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies. It is the policy of the state to avoid the necessity for overtime work whenever possible. This policy does not restrict the extension of regular working-hour schedules on an overtime basis in those activities and agencies where such is necessary to carry on the state business properly during a manpower shortage."

Section 18024 of the Government Code requires the State Personnel Board to adopt rules governing hours of work and attendance records and reads as follows:

"18024. The State Personnel Board shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules."

The State Personnel Board, pursuant to Section 18024 of the Government Code, has adopted Section 90 of Title 2 of the California Administrative Code, which reads as follows:

"90. Attendance Records. Each appointing power shall keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. Such records shall be kept in the form and manner prescribed by the Department of Finance in connection with its powers to devise, install and supervise a modern and complete accounting system for state agencies."

Furthermore, Section 18705 of the Government Code, which authorizes the State Personnel Board to provide by rule for days, hours, and conditions for state civil service employees, reads as follows:

"18705. In order to secure substantial justice and equality among employees in the state civil service, the board may provide by rule for days, hours and conditions of work, taking into consideration the varying needs and requirements of the different state agencies and the prevailing practices for comparable services in other public employment and in private business."

However, the administrative rules of the State Personnel Board (Ch. 1 (commencing with Sec. 1) Div. 1, Title 2, Cal. Adm. C.) do not contain a detailed schedule of working hours of state civil service employees. Such scheduling is instead left to the appointing power itself pursuant to the authorization contained in Section 11152 of the Government Code, which provides:

"11152. Subject to the approval of the Governor, the head of each department may arrange and classify the work of the department and consolidate, abolish, or create divisions thereof. So far as consistent with law the head of each department may adopt such rules and regulations as are necessary to govern the activities of the department and may assign to its officers and employees such duties as he sees fit. For the betterment of the public service, he may reassign to any employees under the chief of any division, such duties as he sees fit."

In addition, Section 4009 of the Welfare and Institutions Code authorizes the State Department of Health to appoint and fix the compensation of such employees as it deems necessary, subject to the laws governing civil service, and Section 4302 of the Welfare and Institutions Code provides that the Director of Health shall have the final authority for determining state hospital employee needs.


Thus, the Director of Health is authorized by Section 11152 of the Government Code and Section 4302 of the Welfare and Institutions Code to fix the work hours of the employees in question subject to the limitations prescribed by Sections 18020, 18024, and 18705 of the Government Code and Section 90 of Title 2 of the California Administrative Code. Those provisions require the establishment of a work-week and workday whose length is determined by the varying needs of the state agency and the keeping of accurate time and attendance records for each employee and officer employed by the agency. There is no authorization to employ any person without prescribing any hours of work during any particular pay period.

Honorable Mike Cullen - p. 4 - #1864

Therefore, in our opinion, the State Department of Health cannot employ physicians on a half-time basis without prescribing any hours of work during any particular pay period.

Very truly yours,

Bion M. Gregory
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